Is the stipend rate being calculated correctly?

YES. "Past practice has always used the cost of a family plan when calculating the stipend."

Council 4
AFSCME®
We Make Connecticut Happen

Letter to the BOF from AFSCME
01-11-2016

January 11, 2016

Town of Woodstock Board of Finance
Chairman David A. Hosmer
415 Route 169
Woodstock, CT 06281

Re: Medical Stipend

Dear Mr. Hosmer:

It has been brought to my attention that the Board of Finance has been discussing the stipend language shown on page 19 of the current union agreement between the Town of Woodstock and Local 1303-296. This contract was negotiated in good faith in 2013 by the Board of Selectmen, a union employee negotiation team, and an AFSCME Union representative.

As I am sure you are aware, all union contract negotiations are an arduous process requiring give and take on both sides. The final negotiated agreement "in total" was acceptable to the Town employees and Board of Selectmen. The contract was signed and made effective.

While it seems several Board of Finance members have argued the stipend amount should be based on the rate for individual coverage rather than the family coverage rate, these particular members are the only people who have been confused by the language in the contract to date. This interpretation is the same as it has always been for the past many years, and all parties who negotiated this and previous contracts have negotiated with this same understanding. Past practice has always used the cost of a family plan when calculating the stipend amount.

Please be aware that any proposed change in language or proposed revised interpretation would not only be a violation of the current union agreement between the Town of Woodstock and Local 1303-296, but the provisions of the Municipal Employees Act. We are prepared to immediately file a complaint with the State of Connecticut Labor Board if any action is taken to "reinterpret" this language and which results in a change of our negotiated benefits.

American Federation of State, County and Municipal Employees, AFL-CIO
TEL 860-224-4000 New Haven 203-776-1674 FAX 860-224-3041 WEB www.council4.org
444 East Main Street, New Britain, CT 06051

Furthermore, the employees covered under this particular contract (all women) have made me aware that other union contracts in the Town are not being targeted in a similar manner. Discrimination is a serious concern in all workplaces.

The AFSCME union members are committed to serving the residents of the Town of Woodstock with respect and integrity, our expectations are that the Town of Woodstock would be committed to these same standards.

Very Truly Yours,

Kevin M. Murphy, Director
Collective Bargaining & Organizing
Council 4 AFSCME

KMM/bw
cc: Tina Lajoie, President, Local 1303-296

Is the stipend program a violation of the Affordable Care Act (ACA)?

NO. Because the Town has less than 50 full-time employees, it is NOT in violation of the ACA.

Date 02-11-2016

Board of Selectmen
Town of Woodstock

BOF letter to the BOS
02-11-2016

As you are aware, the Woodstock board of finance has been investigating concerns that the town of Woodstock healthcare program stipend program for town hall employees who opt-out of healthcare insurance may be in violation of the Affordable Care Act (ACA). Pursuant to suggestions made by the town attorney, the board of finance had requested opinions on the matter from both the town's insurance consultant and from the board of education's (BOE) TPA (third party administrator). ~~Guidance received from the BOE's TPA suggests that while in technical violation of the affordability requirement of the ACA~~, Woodstock is, at this time, exempt from compliance and from penalties that could otherwise be imposed; however, after further review it appears that the town of Woodstock could fall under guidelines as an aggregated employer and be classified as an ALE (a large employer with > 50 employees) when all town employees are considered; this would include town hall employees, highway department employees and BOE employees as they are all funded through the town.

not correct per Dan

See for reference:

Link 1: https://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act

Particular reference to sections 6 and 8

Link 2: https://www.irs.gov/Affordable-Care-Act/Employers/Determining-if-an-Employer-is-an-Applicable-Large-Employer

Particular reference to "Employer Aggregation Rules"

The technical violation: When the value of the opt-out credit someone could have received is considered as part of the "cost" of enrolling in the healthcare coverage, as is suggested in the guidelines, the "cost" to the employee is $1163 in lost opportunity plus the monthly contribution of either $216.67 or $262.17 making the total "cost" to the employee either $1379.67 for employee +1 per month or $1425.17 for a family plan per month. Either of these costs is likely to be well in excess of the limits of 9.5% of household income for most employees, in fact several times higher than allowed, and would be in violation of the ACA affordability limits.

For someone with a $40,000 salary this would be as much as 41% of their income for an employee +1, and 42.8% for a family plan. The limit under the ACA is 9.5%.

In the worst case, an employee with a $40,000 salary, and no additional family income, with a family plan, any stipend or opt-out cash payment over $654 per year could cause a violation — allowable cost $40,000 x .095= $3800 less the employee contribution of $3146 = $654/yr.

Donna Stefanik

From: David Richardson <daver@snet.net>
Sent: Wednesday, January 13, 2016 2:59 PM
To: sonett19@charter.net; Mike Dougherty; Fred Chmura; Jdkfortin Fortin; dcab45 @yahoo.com; glen lessig; woodstockbrass@charter.net; attybradrick@aol.com
Cc: Donna Stefanik; Hebert, Dan; daver@snet.net
Subject: BOF Meeting Follow-up re: Stipends
Attachments: 20160104140221430.pdf

BOF email 01-13-2016

All,

Following up on my assignment from last night's meeting:

This morning I called Dan Hebert, the TPA for the BOE's healthcare program, primarily to thank him for the information he had provided in his Dec 16th email. We briefly discussed the difficulty of finding this kind of information without knowing exactly the right question to ask, and in that discussion, I asked his opinion as to whether or not Woodstock would be exempt. He believes we are exempt from the affordability aspect, and from any penalty, as the "town" has fewer than 50 (fifty) employees. He also provided the following link to an IRS informational page that helps explain some of the employer obligations under the ACA (link 1). The only potential issue I find would be under "aggregate employer"; see question #8 link 1 – however the IRS has yet to issue guidelines for "Aggregate Employers for Government Entities", so at least for the time being, we would seem to be OK. Link 2 provides some information on defining Large Employers (>50) and the issue of aggregate employers.

Link 1 : https://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act

Link 2 : https://www.irs.gov/Affordable-Care-Act/Employers/Determining-if-an-Employer-is-an-Applicable-Large-Employer

To clarify last night's discussion of the issue with a potential affordability violation:

As per the "summary guidance/opinion" in the attachment from Dan Hebert dtd 12/16/2015 –

The contribution from Town Hall employees toward their Health Insurance plan is $2600 per year for Employee +1 and $3146 per year for Family – that would be $216.66 per month employee +1 , or $262.17 per month family plan. As you know, we have no employee only participants. The monthly "Opt-out cash payment" or stipend for those who opt out is currently $1163 per month per Allan Walker.

When the value of the opt-out credit someone could have received is considered as part of the "cost" of enrolling in the healthcare coverage, as is suggested in the guidelines, the "cost" to the employee is $1163 in lost opportunity plus the monthly contribution of either $216.67 or $262.17 making the total "cost" to the employee either $1379.67 for employee +1 per month or $1425.17 for a family plan per month.

For someone with a $40,000 salary this would be as much as 41% of their income for an employee +1, and 42.8% for a family plan. The limit under the ACA is 9.5%.

In the worst case, an employee with a $40,000 salary, and no additional family income, with a family plan, any stipend or opt-out cash payment over $654 per year could cause a violation — allowable cost $40,000 x .095= $3800 less the employee contribution of $3146 = $654/yr.

This makes clear the issue of exorbitant "opt-out cash payments" or stipends and the potential problems that can occur as well as the basic unfairness issue which the ACA is trying to deal with.

Since it appears that there is no imminent threat of violation or penalty as long as we are considered exempt, there is no legal conflict with the union contract and therefore there is no basis for any change at this time. This does however make any attempt at combining the groups for insurance savings purposes impossible as it would result in an immediate violation.

Pending further instruction from the Chairman of the BOF, I believe there is nothing further for me to do with regard to the letter to the selectmen.

Thanks to Dan Hebert for his assistance in this.

Dave Richardson

BOF email
01-13-2016

Memo to BOF from eBenefits Group
01-06-2016

ebenefits group
employee benefits made easy

DATE: January 6, 2016

TO: **Members of the Board of Finance**

FROM: Darlene L. Kish, CIC, CHC, Sr. VP and Partner, eBenefits Group Northeast, LLC DLK

SUBJECT: Health Insurance—Written Opinion

Is the AFSME contract stipend in violation of any regulation under ACA, ERISA, or other federal or state department of labor regulations?

As stated previously, providing a stipend to employees who do not elect to enroll in employer-funded health insurance coverage (because they already have other coverage) is common practice in both the public and private sector. The stipend in the AFSCME contract does NOT violate ACA, ERISA, or DOL regulations.

Can you provide a firm dollar figure on how much the health insurance cost would be for an individual?

No. Due to the ACA, any rates for healthcare are costed out based on the person's age. So, for example, if I am 42, my husband is 52 and we have a 20, 25, and 27 year old, the rate for each age group would be added together to come up with the total rate. There is NOT one set rate for each employee.

In the past, or for a group of over 50 employees, we WOULD have an individual rate, a 2-person rate, and a family rate in Connecticut. Each state is different with this. Moreover, rates are no longer gender-based, so a male aged 20 is the same rate as a female aged 20 even though there is a chance that the female may be utilizing the rates more than the male.

Letter to the BOF from Town Attorney
11-09-2015

Section 15.2

Employees who elect not to participate in the medical insurance provided by the Town shall receive a monthly stipend*. This stipend is calculated using 50% of the total monthly healthcare premium for an employee who carries the health insurance and will also include a monthly portion of the annual HSA deposit for a family plan. Employee must provide proof of medical insurance coverage to take this option.

****Employees who qualify for this option, but who have already received deposits to their Health Savings Account (HSA) in the current fiscal year, will receive a prorated stipend amount during that same fiscal year.***

As outlined below, in order to be compliant with the ACA, ERISA and IRS Regulations, the details of any voluntary stipends in lieu of health care must meet certain requirements.

You have asked a number of specific questions regarding this matter. The questions and responses are as follows:

1. ***Is the current incentive program to encourage "Town Hall" employees to decline insurance coverage a violation of any regulations under ACA, ERISA, or any other federal, state department of labor, or EEOC regulations?***

Response: According to the Town's insurance consultant, stipends in lieu of health insurance coverage are a common provision within municipal collective bargaining agreements. The stipend is a voluntary benefit available to certain bargaining unit Town employees according to the terms of the CBA and, by longstanding practice, to non-bargaining unit employees. To be eligible for the stipend, employees must provide proof of medical coverage through a spouse or family member. As such, for the bargaining unit employees it was bargained for under the Municipal Employees Relations Act ("MERA") as part of the wages, benefits and conditions of employment. The voluntary stipend benefit is in lieu of the health care benefit, which, under CBA, is offered to all AFSCME bargaining unit employees.

So long as certain conditions of the stipend program are consistent with the recommendations outlined below, the stipend program is not likely to be found to be a violation of the Affordable Care Act ("ACA"). The ACA requires, among other things, that employers with more than 50 employees offer healthcare benefits to their employees to avoid penalties (the "Employer Mandate"). The Town of Woodstock falls below the threshold number of employees for the Employer Mandate. Woodstock, however, meets the spirit of the ACA Employer Mandate because it offers a health care plan to its covered employees. Even if the Town, as an employer, was subject to the ACA penalty provision, the stipend program does not appear to violate the Employer Mandate provision of the ACA because the voluntary stipend is in lieu of the healthcare benefit offered by the Town and is not intended to (a) provide a source of funding for employees to purchase health care coverage individually or (b) encourage "high risk" individuals to decline coverage.

2. *Is the language in the union (AFSCME) contract, as noted above, in violation of any regulations under ACA, ERISA, or any other federal or state department of labor regulations? If so, what steps should be taken to correct the situation? The contract does have a "savings clause" should any part of the contract be deemed invalid.*

Response: Section 15.2 of the CBA relates to the wages, hours and other conditions of employment. As such, it is a mandatory subject of collective bargaining under MERA. It provides a common bargained-for-benefit to employees who elect not to take the Town insurance coverage. The effect of the ACA Employer Mandate is discussed above. The Employee Retirement Security Act of 1974 ("ERISA") establishes minimum standards for pension plans and healthcare plans that are not self- funded. The Town's healthcare plan is currently purchased through Aetna Healthcare. As a traditional policy of health insurance Aetna Healthcare policy is subject to those sections of ERISA that pertain. According to the Town's healthcare consultant, the policy and the stipend program are fully compliant with ERISA. I recommend obtaining a written opinion to that effect from the consultant. In certain circumstances, stipends in lieu of healthcare coverage may be violative of certain provisions of ERISA, ACA and IRS Regulations if the stipend is intended to provide funding for an individual health care policy. n/a

3. *Does the town have any legal obligation to provide a non-union "Town Hall" employee compensation for having declined insurance coverage?*

Response: Benefits derived from negotiated collective bargaining agreements are not legally required to be extended to employees in non-bargaining positions. But by longstanding custom and practice, however, the Town has extended the same benefits to non-bargaining unit employees as those defined in the AFSCME CBA.

4. *Since the incentive/stipend is considered FICA taxable and so impacts future Social Security benefits, are there any legal Social Security issues/implications that the town needs to be aware of?*

Response: No. I have been informed that the stipend is "after tax" compensation. As such, the stipend payments are considered ordinary income to the employee for the purpose of federal income tax and FICA. Under the Town's pension contracts, the stipend is not included in the definition of "salary" for purposes of pension benefit calculations.

5. *Since the stipend being paid is in excess of that stated in the labor agreement, are there other legal issues related to this overpayment that could present liabilities or other causes for concern for the town? For reference: the labor agreement calls for a stipend equal to one half the cost of the premium for "an employee" plus a monthly allocation of the HSA for a family plan; we are paying one half the costs for an employee plus spouse or family plus the monthly allocation for the HSA for a family plan which is considerably greater.*

Response: The determination of the amount of the stipend being paid under the language of Section 15.2 of the CBA should be reviewed by the Town Finance Department. I have